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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,447	07/08/2003	Kent G. West	COL-101-Div	7972

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,447

Applicant(s)

WEST, KENT G.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-10 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9,14 and 15 is/are allowed.
- 6) ☒ Claim(s) 2,3,6-8,10 and 16 is/are rejected.
- 7) ☒ Claim(s) 5 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

At the outset, it is noted that the examiner of record in this application has changed.

Please direct all future proceeding concerning this application to Primary Examiner Jennifer E.

Novosad, Art Unit 3634.

This non-final Office action is in response to the amendment filed April 7, 2005 by which claims 5-7, 9, 10, and 17 were amended and claims 1, 4, and 11-13 were canceled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 3, 7, 10, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 3 are rendered indefinite since the claims improperly seek to link functionally recited structure to positively recited structure through the *positive* recitation "slidingly fitted" in line 2. It is noted when linking positive structure to functional structure only a *functional* recitation should be used. *Similarly*, "being received" in line 2 of claim 7, "extending... into the support frame" in line 2 of claim 10, and "fitted around" in line 2 of claim 16, also render those claims indefinite. *Accordingly, to correct this*, for example, it is suggested that "slidingly fitted" be changed to --adapted to be slidingly fitted--.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 2, and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 3,912,139 (Bowman '139).

Bowman '139 discloses a bicycle rack comprising a bracket (28) including a top face (at 28 in Figure 6) and inner and outer faces whereby the bracket is adapted to be fitted on an elongate support frame (26); a brace (including 18 and 12) including a lower brace (12) coupled to and extending outwardly from the bracket (28) and an upper brace (18) coupled to and extending upwardly from the bracket (28); the bracket (28) being a rectangularly shaped hollow sleeve slidingly fitted on the support frame (26).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman '139, alone.

Bowman '139 discloses the rack as advanced above.

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The claims differs from Bowman '139 in requiring a fastener extending through the bracket.

Although Bowman '139 does not show a fastener it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a fastener extending through the bracket of Bowman '139 for increased support and securement of the brace on the support member.

Terminal Disclaimer

The terminal disclaimer filed on September 17, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 5,992,645 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Allowable Subject Matter

Claims 5 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7, 8, and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 9 and 14-15 are allowed.

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With respect to claim 9, it is noted that the prior art of record fails to show or suggest the arms having a proximal portion being bent inwardly at an acute angle and a distal portion being bent downwardly at an acute angle (see lines 12-15).

With respect to claim 14, it is noted that the prior art fails to show or suggest the lower base being "rotatable" along a horizontal plane (see line 9 and Figure 6 of the instant invention).

Response to Arguments

It is noted that the amendment filed April 7, 2005 did not contain arguments to any claim rejections since applicant incorporated the claims, that were previously indicated as being allowable, into independent form. *However*, as indicated above, claims 6, 2, 3, and 10 are newly rejected as being anticipated by U.S. Patent No. 3,912,139.

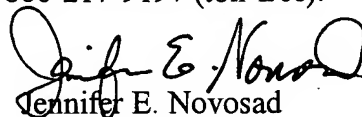
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad

Primary Examiner

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June 24, 2005